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SB 169-Commercial Law – Consumer Protection – Biometric Data Privacy
FAVORABLE
Senate Finance Committee
February 8, 2023

Good afternoon, Chair Griffiths and members of the Senate Finance Committee. I am Karen Morgan, a member of the Executive Council for AARP Maryland. As you may know, AARP Maryland is one of the largest membership-based organizations in the Free State, encompassing almost 850,000 members. **AARP MD supports SB 169-Commercial Law-Consumer Protection-Biometric Data Privacy.** We thank Senator Feldman and the other Senate cosponsors for introducing this legislation.

AARP is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities, and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities, and protection from financial abuse.

AARP MD supports SB 169 because it requires that private entities establish reasonable and necessary standards to protect the use of an individual's biometric data. Biometric data needs to be treated with exceptional care because of its sensitivity, because it is generally regarded as unchangeable, and because its misuse can expose individuals to significant harm from increased risks for fraud, scams, and identity theft.

In the Information Age, data collection has become an extremely useful way to verify who people are and to track their activities. In recent years, the amount of personal information that is collected, used, shared, and sold has skyrocketed. Nearly everyone is affected by this trend, including those in the ages 50 and older community that AARP MD represents. Many, if not most, private entities collect some form of personally identifiable information. This trend is expected to continue in the future and will likely accelerate. At AARP MD, we welcome the promise of significant innovation and the more tailored products and services that could benefit individuals and groups, but only with the proper safeguards in place.

SB 169 helps to establish these safeguards. As specified, it requires private entities to develop written policies that set forth clear retention policies and guidelines for the collection, storage, and destruction of biometric data. Including this requirement in a bill that applies statewide means that Maryland citizens have a clearer idea of what to expect when they consent to the use of their biometric data. Biometric data is so sensitive that requiring private entities to adhere to retention and collection standards as a matter of law is long overdue. Because this biometric data is, for all intents and purposes, permanently connected to, and identified with an individual, that individual should be able to control how that data is used, what it is used for, and how long it is subject to

use. Individuals should be able to limit or stop its use easily and quickly, using procedures that are transparent. Just because private entities choose to collect biometric data does not mean that they should have unlimited control of it. Individuals should still be able to find out quickly and easily what has been done with their data, especially if the private entity has been sharing that information with other parties.

Opponents of this common sense legislation will likely complain that adequate regulation already exists and that the high cost of doing business in Maryland will increase. They will also likely complain that the transparency and data security requirements under this bill are unduly burdensome.

To those businesses that oppose SB 169, we say: if you are in the *data collection business*, you are in the *data protection business*. This applies exponentially more to biometric data because of its unique sensitivity and the potential for dire consequences to individuals if the data is mismanaged or exposed in an unauthorized manner. Biometric data is the gold standard when it comes to identity authentication. As a result, this data is deserving of a gold standard when it comes to its management and protection. The costs and requirements that come with data collection and protection are ones that the entities that want to use the data should be willing to undertake. If the costs are too high, then we respectfully suggest that these entities choose a less sensitive, risky, and costly method for identification authentication.

We support the bill's general prohibition on the selling and trading of biometric data, including the prohibitions on providing incentives for the use of this data conditioned on less than rigorous, standardized protections. The use of biometric data should be limited to identification authentication, not used as a profit center.

The penalty for violation of the bill's provisions is a powerful hurdle for those entities that either negligently or willfully fail to comply with the reasonable protections required in the bill. A violation is justifiably classified as an unfair, abusive, or deceptive trade practice, subject to enforcement by the Office of Attorney General. At the same time, the bill still preserves a private right of action for losses or injuries suffered due to actions prohibited under the bill. The reach of this provision is fair and balanced, as it limits an award to compensation for damages suffered. The bill also specifies that a person may not frivolously bring an action or act in bad faith.

Considering the consequences of violating the sanctity of this data should give everyone pause. The critical need for secure management of this sensitive data cannot be overstated. The stakes are extraordinarily high for individuals who consent to the use of their biometric data. The sanctions for mismanagement of this data should be equally high.

AARP MD supports SB 169 and respectfully requests that the Senate Finance Committee issue a favorable report. For questions, please contact Tammy Bresnahan, Director of Advocacy for AARP Maryland at tbresnahan@aarp.org or by calling 410-302-8451.